UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

iSEE STORE INNOVATIONS, LLC, JOSEPH VONDER HAAR, MARK SCHAEFER, and STEVEN BRENNER, Plaintiffs, v. EMAD AYAD, Serve: 54 Kellett Street Kings Cross NSW, 2011 Australia RABAH MARABY, Serve: 54 Kellett Street Kings Cross NSW, 2011 Australia and iSEE COOLER BOXES, INC., Serve: Registered Agent Agents and Corporations, Inc. 1201 Orange St., Ste. 600 One Commerce Center Wilmington, DE 19801 Defendants.	)	Case No. ________________ JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs iSee Store Innovations, LLC, Joseph Vonder Haar, Mark Schaefer and Steve Brenner (collectively, "Plaintiffs"), by and through respective undersigned counsel, for their Complaint against Defendants Emad Ayad, Rabah Maraby and iSee Cooler Boxes, Inc. (collectively, "Defendants"), state as follows:

PARTIES

1. Plaintiff iSee Store Innovations, LLC ("the Company") is a duly existing and organized limited liability company, organized under the laws of the State of Missouri and having its headquarters and principal place of business in St. Louis, Missouri.

2. Plaintiff Joseph Vonder Haar ("Vonder Haar") is an individual residing in the State of Missouri and, at all times relevant hereto, has been a member and the managing member of the Company.

3. Vonder Haar currently possesses a twenty-two percent (22%) membership interest in the Company.

4. Plaintiff Mark Schaefer ("Schaefer") is an individual residing in the State of Missouri and, at all times relevant hereto, has been a member of the Company.

5. Schaefer currently possesses a ten percent (10%) membership interest in the Company.

6. Plaintiff Steven Brenner ("Brenner") is an individual residing in the State of Missouri and, at all times relevant hereto, has been a member of the Company.

7. Brenner currently possesses a fifteen percent (15%) membership interest in the Company.

8. Defendant Emad Ayad ("Ayad") is an individual residing in Australia. Ayad was an original member of the Company but transferred his interest in the Company to iSee Cooler Boxes, Inc.

9. Prior to the transfer to iSee Cooler Boxes, Inc., Ayad possessed a twenty-six-and-one-half percent (26.5%) membership interest in the Company.

10. Defendant Rabah Maraby ("Maraby") is an individual residing in Australia. Maraby was an original member of the Company but transferred his interest in the Company to iSee Cooler Boxes, Inc.

11. Prior to the transfer to iSee Cooler Boxes, Inc., Maraby possessed a twenty-six-and-one-half percent (26.5%) membership interest in the Company.

12. Defendant iSee Cooler Boxes, Inc. ("Cooler Boxes") is a corporation incorporated under the laws of the State of Delaware and having its principal place of business in Delaware.

13. Ayad and Maraby transferred the entirety of their combined fifty-three percent (53%) membership interest in the Company to Cooler Boxes.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 in that there is complete diversity of citizenship between the parties and the amount in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, including the damages alleged herein and the value of the declaratory relief sought. In addition, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it includes a claim under a federal statute, and the Court has supplemental jurisdiction over the remaining claims.

15. This Court has personal jurisdiction over Ayad and Maraby because they have entered into contracts within this district related to the Company, including the original and first amended operating agreement as alleged herein; they were members of the Company, which is the subject of this litigation; and they have committed torts the effects of which are directed toward Plaintiffs in Missouri, among other things.

16. This Court has personal jurisdiction of Cooler Boxes because it has entered into contracts, written or oral, purporting to transfer ownership of membership interests in the Company and is an assignee of the interests of withdrawn members of the Company, which is the subject of this litigation, among other things.

17. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c), because a substantial part of the events giving rise to Plaintiffs' claims occurred in this district, a substantial part of property that is the subject of this action is situated in this district; and/or one or more Defendants is/are subject to personal jurisdiction in this district.

FACTUAL BACKGROUND

18. On or about December 1, 2010, Maraby, Ayad, Vonder Haar, Brenner, and Greg Litwicki ("Litwicki") formed the Company as business partners and entered into the Company's original operating agreement.

19. The Company is a global design and manufacturing business that provides specially-designed cooler, beverage holder, and display products to retail distributors.

20. Litwicki withdrew as a member and Schaefer became a member in the Company. In or around March 2012, Maraby, Ayad, Vonder Haar, Brenner, and Schaefer amended the operating agreement by entering into and signing the First Amended Operating Agreement of iSee Store Innovations, LLC (the "Operating Agreement"), a true and accurate copy of which is attached hereto as ***Exhibit 1*** and incorporated herein by reference.

21. At all relevant times hereto, the Operating Agreement governed the rights, responsibilities and obligations of and between the members of the Company.

22. Pursuant to Section 4.1 of the Operating Agreement, the Company is a member-managed limited liability company.

23. Section 4.2.4.iii of the Operating Agreement provides that no member shall "use the Company name, credit or property for other than Company purposes."

24. Section 4.2.4.iv of the Operating Agreement provides that no member shall "do any act detrimental to the interests of the Company or which would make it impossible to carry on the business or affairs of the Company."

25. Section 4.2.4.ii of the Operating Agreement provides that no member shall "without the consent of all of the other Members, assign, transfer, pledge, mortgage or sell all or part of a Member's interest in the Company to any other person or entity or enter into any agreement as the result of which any person or persons not a member shall become interested with him in the Company."

26. Section 9.4 of the Operating Agreement provides as follows: "A Member shall not have the right to sell, offer to sell, transfer, assign, convey, gift, encumber, pledge, bequest or otherwise dispose of his interest except as explicitly provided in this Agreement."

27. The Operating Agreement does *not* explicitly provide for the transfer of a member's interests to anyone other than the Company or the other members. *See* Section 9.3 of the Operating Agreement.

28. Section 3.2 of the Operating Agreement makes clear that "[n]o additional Members may be added without the approval of all of the Members."

Unauthorized Distribution of Company-Branded Products

29. The Company has had an important business relationship with Fountain Products Ltd. (the "Supplier") to tool and fabricate the specially-designed, high-quality products that the Company sells to its customers in numerous markets.

30. Maraby and Ayad, acting individually or through a separate company they owned or controlled called Dot Design Group PTY Ltd. ("Dot")—and without the knowledge or authorization of the Company, Vonder Haar, Brenner, or Schaefer—engaged the Supplier to provide them Company-branded products for their own separate use and sale.

31. Maraby and Ayad, themselves or through Dot, then sold such Company-branded products to consumers in, upon information and belief, Australia, New Zealand and perhaps other markets, for their own profit and to the exclusion of the Company.

32. While the Company has contracted with Dot to provide certain design services, those designs have been paid for by the Company and tooled by the Company, and all intellectual property rights in such designs and products are held by the Company. Those services by Dot were in furtherance of product sales by the Company and for its benefit. Dot did not and does not have any right to produce or sell any Company products except through the Company.

33. Maraby and Ayad procured the Company-branded products from the Supplier through the use of confidential Company information learned in their (former) capacity as members of the Company and/or by misleading the Supplier into believing these actions were authorized by virtue of their affiliation with the Company.

34. Maraby and Ayad personally reaped the benefits, and personally profited, from the sales of such Company-branded products.

35. The Company has not received any profits or royalties from these unauthorized sales.

36. Vonder Haar, Brenner and Schaefer have not received any profits or royalties from these unauthorized sales.

37. The production, distribution, sale and generation of profits of the unauthorized Company-branded products were carried out with no review or oversight by any other party, and without informed consent of the members disinterested in the transactions.

38. The unauthorized sales by Maraby and Ayad, through Dot, fell squarely within the scope of the business contemplated to be undertaken by the Company.

39. Maraby and Ayad diverted such opportunity to themselves and usurped it for their own benefit.

40. The profits and benefits derived from these unauthorized sales should have inured to the benefit of the Company and its other members.

Unauthorized Transfer of Membership Interests in the Company

41. Consistent with their unilateralism without regard to their duties to, or the rights of, the Company and its other members, Maraby and Ayad transferred the entirety of their respective membership interests in the Company to Cooler Boxes, notwithstanding that the Operating Agreement did not permit such action.

42. At no time did the other members of the Company provide specific written consent concerning the transfer of membership interests by Maraby and Ayad to Cooler Boxes.

43. Moreover, Cooler Boxes has neither signed nor become a party to the Operating Agreement, nor has it received the written consent of all members of the Company to be admitted as a member.

44. By transferring ownership of the Company to a corporate entity, Maraby and Ayad subjected Vonder Haar, Schaefer and Brenner to becoming (or already being) business partners with downstream corporate owners without their knowledge, consent or control.

45. Indeed, after transferring their membership interests to Cooler Boxes, Maraby and Ayad then caused the transfer of the ownership interests in Cooler Boxes to two other corporate entities. Thus, Vonder Haar, Schaefer and Brenner were and are subject to becoming (or already being) business partners with unknown owners of those downstream corporate entities without their knowledge, consent or control.

46. At no time did the other members of the Company provide specific written consent concerning the transfer of Cooler Boxes' ownership to other corporate entities.

Count I
(Declaratory Judgment as to Withdrawal of Membership)

47. Plaintiffs re-allege and incorporate herein paragraph 1 through 46 above.

48. To the extent not explicitly covered by the Operating Agreement, the rights, responsibilities and obligations of the respective parties are governed by the Missouri Limited Liability Act (the "Act").

49. The Act provides that a person ceases to be, or withdraws as, a member of a limited liability company if the member assigns all of his interest in the limited liability company, unless otherwise provided in the operating agreement or by the ***specific written consent*** of all members at the time. *See* Mo. Rev. Stat. § 347.123.

50. The Act further provides that "upon the withdrawal of a member, the withdrawn member shall have no further right to participate in the management and affairs of the limited liability company . . . ." *See* Mo. Rev. Stat. § 347.121.3.

51. At no time did the other members of the Company provide specific written consent to the transfer by Maraby and Ayad of their interests to Cooler Boxes.

52. By transferring their interests to Cooler Boxes (and subsequently causing the transfer of Cooler Boxes' ownership interests) without the specific written consent of all members, Maraby and Ayad engaged in an event of withdrawal from the Company.

53. Accordingly, Maraby and Ayad "have no further right to participate in the management and affairs of the limited liability company . . . ." *See* Mo. Rev. Stat. § 347.121.3.

54. Under the Act, an assignee may become a member of a limited liability company only by "signing, in person or by an attorney in fact, or otherwise becoming a party to the operating agreement and by complying with the applicable terms and conditions of the operating agreement or, if the operating agreement does not so provide, upon the written consent of all members." *See* Mo. Rev. Stat. § 347.113.

55. Cooler Boxes has neither signed nor become a party to the Operating Agreement, nor has it received the written consent of all members of the Company to be admitted as a member.

56. Further, as an assignee, Cooler Boxes does not have the authority to "participate in the management of the business and affairs of the limited liability company or to become or to exercise the rights of a member." *See* Mo. Rev. Stat. § 347.115.1.

57. Pursuant to the Operating Agreement and applicable law, Plaintiffs informed Maraby and Ayad as to their status as withdrawn members based upon their unauthorized transfer of their interests to Cooler Boxes.

58. Maraby and Ayad have failed and refused to acknowledge and/or comply with the Operating Agreement and Missouri law.

59. Maraby and Ayad have, instead, insisted on access to the Company and its records and have attempted to exercise rights as if they remained members of the Company.

60. Alternatively, Maraby and Ayad, through their respective indirect interests in Cooler Boxes, have demanded to exercise rights as if Cooler Boxes were a member of the Company.

61. As a result of Maraby's and Ayad's withdrawal as members, Plaintiffs have given, and hereby give, written notice to Defendants of their intent to purchase for fair value Maraby's and Ayad's interests that were transferred to Cooler Boxes, in accordance with Mo. Rev. Stat. § 347.103.2.

62. Nevertheless, Defendants have refused and continue to refuse to sell their interests at fair value in accordance with Mo. Rev. Stat. § 347.103.2.

63. There is a real and present controversy as to the status of Maraby, Ayad and Cooler Boxes as it relates to the Company and to Vonder Haar, Brenner and Schaefer. There is a real and present controversy over the extent to which Defendants have no right to participate in the management and affairs of the Company or to participate in votes with Vonder Haar, Brenner and Schaefer relating to the operation of the business. There is a real and present controversy over the obligation of Defendants to sell their interests to the Company.

64. Entry of the declaratory relief sought herein will terminate the controversy over the respective rights of the parties and will afford the parties relief from uncertainty, insecurity, and controversy giving rise to this claim.

WHEREFORE, Plaintiffs pray the Court to:

(i) enter judgment in their favor and against Maraby, Ayad, and Cooler Boxes on this Count;

(ii) declare that Maraby and Ayad have withdrawn as members from the Company and have no right to participate in the management and affairs of the Company or otherwise to vote on matters relating to the operation of the business;

(iii) declare that Cooler Boxes has only those rights afforded an assignee of the interests of withdrawn members of the Company and has no right to participate in the management and affairs of the Company;

(iv) declare the rights of Plaintiffs to receive an accounting, pursuant to Mo. Rev. Stat. § 347.121.2, from Maraby and Ayad for any profit or benefit derived by them without the informed consent of more than one-half by number of disinterested members: from any transaction connected with the conduct of the business and affairs of the Company prior to their withdrawal; and from any personal use by them of the Company's property, including confidential or proprietary information of the Company or other matters entrusted to them as a result of their prior status as members;

(v) declare the rights of Plaintiffs to require and effectuate the sale to the Company of Defendants' (transferred) interests in the Company at fair value pursuant to Mo. Rev. Stat. § 341.103.2, with the valuation of such interests to exclude the goodwill of the Company and to be reduced by any damages suffered by the Company as a result of the withdrawn members' breach of the Operating Agreement;

(vi) award to Plaintiffs the costs incurred in connection with this action, including reasonable attorney's fees; and

(vii) grant such other and further relief as the Court may deem just and proper.

COUNT II
(Breach of Fiduciary Duties)

65. Plaintiffs re-allege and incorporate herein paragraph 1 through 64 above.

66. Prior to their withdrawal as members, Maraby and Ayad were members of the Company, a member-managed limited liability company.

67. As members, Maraby and Ayad owed fiduciary duties to the Company and its other members (i.e. Vonder Haar, Schaefer and Brenner).

68. Maraby and Ayad engaged the Company's Supplier to produce Company-branded products.

69. Maraby and Ayad sold such products through their own separate business for a substantial profit.

70. The production and sale of such products was not authorized by, or fully disclosed to, Plaintiffs.

71. Maraby and Ayad's undisclosed and unauthorized production and sale of such products was not, and is not, in the best interests of the Company or its members.

72. The opportunity to sell Company products in new markets fell squarely within the scope of business to be pursued by the Company and the opportunity to invest in and pursue those new markets belonged to, and should have been presented to, the Company and thus all of its members.

73. Instead, however, Maraby and Ayad diverted that opportunity to themselves and usurped it for their own benefit, reaping substantial profits from the sale of those products.

74. The foregoing acts and omissions were carried out by Maraby and Ayad by virtue of confidential Company information obtained through their (former) positions as members of the Company and/or by virtue of their affiliation with the Company.

75. To the extent that such misconduct by Maraby and Ayad occurred while they remained members of the Company, they thereby breached their fiduciary duties to Plaintiffs.

76. The foregoing acts and omissions served to substantially damage Plaintiffs by diverting potential profits, preventing them from exercising appropriate quality control, improperly appropriating the Company's brand, damaging its goodwill among consumers, diluting and/or tarnishing its brand, creating consumer confusion, and harming its relationship with its trusted Supplier.

77. Plaintiffs presently estimate the amount of their damages to be well in excess of $75,000, exclusive of interest and costs.

78. Pursuant to Mo. Rev. Stat. § 347.088.3, every member or manager of a limited liability company "shall account to the limited liability company and hold as trustee for it any profit or benefit derived by such person without the informed consent of more than one-half by number of disinterested managers or members from any transaction connected with the conduct of the business and affairs of the company."

79. Maraby and Ayad have received substantial profits and benefits from their use of confidential Company information and their unauthorized production and sale of Company-branded products.

80. Such profits and benefits were received by Maraby and Ayad without the informed consent of more than one-half by number of disinterested managers or members of the Company

WHEREFORE, Plaintiffs pray the Court to enter judgment in its favor and against Maraby and Ayad, jointly and severally, on this Count; enter an order requiring that Maraby and Ayad disgorge to the Company all monies and profits received by them in connection with the wrongful acts outlined above, including but not limited to all monies and profits relating to the unauthorized sales; award actual damages to Plaintiffs and against Maraby and Ayad in an amount to be proven at trial, in excess of $75,000; award Plaintiffs the costs incurred in connection with this action, including reasonable attorney's fees, and pre and post-judgment interest; and grant such other and further relief as the Court may deem just and proper.

COUNT III
(Misappropriation of Trade Secrets – 18 U.S.C. § 1836, *et seq.*)

81. Plaintiffs re-allege and incorporate herein paragraph 1 through 80 above.

82. The terms on which Company-branded products could be procured from the Company's Supplier, are trade secrets of the Company from which it derives independent

economic value, actual or potential, by virtue of their not being generally known to, and not being ascertainable by proper means by, another person who can obtain economic value from their disclosure or use.

83. The Company made reasonable efforts to maintain the secrecy of that trade secret information.

84. Maraby and Ayad misappropriated that trade secret information by acquiring and using it through improper means, including misrepresentation and/or a breach of a duty to maintain secrecy.

85. Maraby and Ayad also misappropriated that trade secret information, by using it without the consent of the Company and knowing or having reason to know, at the time of its use, that it had been acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use, or that it had been derived through their roles for the Company under which they had a duty to the Company to maintain its secrecy or limit its use.

86. Maraby and Ayad thereby violated the Defend Trade Secrets Act, 18 U.S.C. § 1836, *et seq*.

87. Maraby and Ayad have been unjustly enriched by such misappropriation.

88. The Company has suffered actual loss caused by such misappropriation.

WHEREFORE, the Company prays the Court to enter judgment in its favor and against Maraby and Ayad, jointly and severally, on this Count; award actual damages to the Company and against Maraby and Ayad in an amount to be proven at trial, in excess of $75,000; award the Company the costs incurred in connection with this action, including reasonable attorney's fees, and pre and post-judgment interest; and grant such other and further relief as the Court may deem just and proper.

COUNT IV
(Misappropriation of Trade Secrets – Mo. Rev. Stat. § 417.450, *et seq.*)

89. Plaintiffs re-allege and incorporate herein paragraph 1 through 88 above.

90. The terms on which Company-branded products could be procured from the Complany's Supplier, are trade secrets of the Company from which it derives independent economic value, actual or potential, by virtue of their not being generally known to, and not being ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use.

91. The Company made reasonable efforts to maintain the secrecy of that trade secret information.

92. Maraby and Ayad misappropriated that trade secret information by acquiring and using it through improper means, including misrepresentation and/or a breach of a duty to maintain secrecy.

93. Maraby and Ayad also misappropriated that trade secret information, by using it without the consent of the Company and knowing or having reason to know, at the time of its use, that it had been acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use, or that it had been derived through their roles for the Company under which they had a duty to the Company to maintain its secrecy or limit its use.

94. Maraby and Ayad thereby violated the Missouri Uniform Trade Secrets Act, Mo. Rev. Stat. § 417.450, *et seq*.

95. Maraby and Ayad have been unjustly enriched by such misappropriation.

96. The Company has suffered actual loss caused by such misappropriation.

WHEREFORE, the Company prays the Court to enter judgment in its favor and against Maraby and Ayad, jointly and severally, on this Count; award actual damages to the Company and against Maraby and Ayad in an amount to be proven at trial, in excess of $75,000; award the Company the costs incurred in connection with this action, including reasonable attorney's fees, and pre and post-judgment interest; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

DATED: June 8, 2017

PENNINGTON SHEA, LC

By: /s/ *Francis E. Pennington, III*
Francis E. Pennington, III, MO #26194
106 West Madison Ave., Suite 200
St. Louis, MO 63122
Telephone (314) 965-4000
fep@penningtonshea.com

Attorneys for Plaintiff iSee Store Innovations, LLC

SPENCER FANE LLP

By: /s/ *Francis X. Neuner, Jr.*
Francis X. Neuner, Jr., MO #48071
Eric D. Block, MO #65789
1 N. Brentwood Blvd., Suite 1000
St. Louis, MO 63105
Telephone (314) 863-7733
Facsimile (314) 862-4656
fneuner@spencerfane.com
eblock@spencerfane.com

Attorneys for Plaintiffs Joseph Vonder Haar, Mark Schaefer and Steve Brenner